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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/462,625	07/28/2000	GEORGI GEORGIEV	0652.1630001	5330

7590 09/24/2003

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EXAMINER

RAWLINGS, STEPHEN L

ART UNIT

PAPER NUMBER

1642

DATE MAILED: 09/24/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/462,625

Applicant(s)

GEORGIEV ET AL.

Examiner

Stephen L. Rawlings, Ph.D.

Art Unit

1642

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 June 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a)  The period for reply expires \_\_\_\_ months from the mailing date of the final rejection.  
b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on 04 June 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2.  The proposed amendment(s) will not be entered because:

- they raise new issues that would require further consideration and/or search (see NOTE below);
- they raise the issue of new matter (see Note below);
- they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3.  Applicant's reply has overcome the following rejection(s): See Note of Explanation.

4.  Newly proposed or amended claim(s) \_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Note of Explanation.

6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 74,84 and 92.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 53-58, 60-73, 75-77, 79-83, 85-91, and 92-.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8.  The proposed drawing correction filed on \_\_\_\_\_ is a) approved or b) disapproved by the Examiner.

9.  Note the attached Information Disclosure Statement(s) ( PTO-1449) Paper No(s). \_\_\_\_\_.

10.  Other: See attached Note of Explanation; Interview Summary, No. 20

**Note of Explanation**

1. The notice of appeal filed June 4, 2003 in Paper No. 17 is acknowledged and has been entered.
2. The amendment filed June 4, 2003 in Paper No. 18 is acknowledged and has been entered. Claims 59 and 78 have been canceled. Claims 53-58, 60, 61, 63-65, 73-77, 79, 80, 82-88, and 93 have been amended.
3. The declaration under 37 CFR § 1.132 by Sergei Kiselev filed June 4, 2003 in Paper No. 19 is acknowledged and has been entered.
4. Applicants' request for reconsideration in view of the amendment to the claims filed July 4, 2003 has been found persuasive to overcome the following grounds of rejection:
  - (a) The rejection of claims 53-55, 57-63, 65, 66, 69, 71, and 72 under 35 USC § 112, first paragraph for the reasons set forth in section 5 of the previous Office action mailed December 4, 2002 (Paper No. 15).
  - (b) The rejection of claims 53-56, 59-63, 65, 66, and 68-70 under 35 USC § 112, first paragraph for the reasons set forth in section 6 of the previous Office action mailed December 4, 2002 (Paper No. 15).
  - (c) The rejection of claims 53-56, 59-67, 68, 70, 73, 75, 78-83, 85, 88, and 89 under 35 USC § 112, first paragraph for the reasons set forth in section 7 of the previous Office action mailed December 4, 2002 (Paper No. 15).
  - (d) The rejection of claim 93 under 35 USC § 112, first paragraph for the reasons set forth in section 12 of the previous Office action mailed December 4, 2002 (Paper No. 15).
  - (e) The rejection of claims 73, 75-77, 79-83, and 85-91 under 35 USC § 102(a) for the reasons set forth in section 14 of the previous Office action mailed December 4, 2002 (Paper No. 15).

5. The reply filed June 4, 2003 in Paper Nos. 18 and 19 fails to place this application in condition for allowance. The following grounds of rejection are maintained:

(a) The rejection of claims 53-58, 60-72, and 93 under 35 USC § 102(b) for the reason set forth in section 11 of the previous Office action mailed December 4, 2002 (Paper No. 15).

(b) The rejection of claims 73, 75-77, 79-83, and 85-91 under 35 USC § 102(b) for the reason set forth in section 13 of the previous Office action mailed December 4, 2002 (Paper No. 15).

(c) The rejection of claims 53-58 and 60-64 under the judicially created doctrine of obviousness-type double patenting for the reason set forth in section 17 of the previous Office action mailed December 4, 2002 (Paper No. 15).

6. The reasons the reply filed June 4, 2003 in Paper Nos. 18 and 19 fails to place this application in condition for allowance are set forth below:

The merit of the declaration under 37 CFR § 1.132 by Sergei Kiselev has been carefully considered; however, as claims 53-58, 60-73, 75-77, 79-83, 85-91, and 93 have been rejected under 35 USC § 102(b), rather than § 102(a), the declaration cannot obviate the rejections set forth in sections 11 and 13.

Applicants' arguments, in view of Exhibit D, have been carefully considered; however, the merit of Exhibit D is insufficient to establish that the cited prior art references, which have been used as the bases of the rejections of the claims under 35 USC § 102(b) in sections 11 and 13 of the previous Office action, were not made publicly available at least one year prior to the effective filing date of this application, July 11, 1997. Exhibit D is a letter signed by the executive editor of the Russian Journal of Genetics, which states that although scheduled for issue on June 16, 1996, volume 35, number 5 of "GENETIKA" was not received by subscribers to the journal until late July. However, the prior references cited as the basis of the rejections of the claims under 35 USC § 102(b) were published in volume 32, number 5. Therefore, Exhibit D is

not given sufficient weight to obviate the rejections of the claims under 35 USC § 102(b).

7. Applicants' request that the rejection of claims 53-58 and 60-64 under the judicially created doctrine of obviousness-type double patenting for the reason set forth in section 17 of the previous Office action mailed December 4, 2002 (Paper No. 15) be held in abeyance is acknowledged.

8. Claims 53-58, 60-77, and 79-93 are pending in the application. Claims 74, 84, and 92 are allowable. Claims 53-58, 60-73, 75-77, 79-83, 85-91, and 93 are rejected.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen L. Rawlings, Ph.D. whose telephone number is (703) 305-3008. The examiner can normally be reached on Monday-Friday, 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony C. Caputa, Ph.D. can be reached on (703) 308-3995. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Stephen L. Rawlings, Ph.D.  
Examiner  
Art Unit 1642

slr  
September 10, 2003

ANTHONY C. CAPUTA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600

ANTHONY C. CAPUTA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600

<b>Interview Summary</b>	<b>Application N .</b>	<b>Applicant(s)</b>	
	09/462,625	GEORGIEV ET AL.	
	<b>Examiner</b> Stephen L. Rawlings, Ph.D.	<b>Art Unit</b> 1642	

All participants (applicant, applicant's representative, PTO personnel):

(1) Stephen L. Rawlings, Ph.D. (3) \_\_\_\_\_  
 (2) Judith U.Kim. (4) \_\_\_\_\_

Date of Interview: 10 September 2003.

Type: a) Telephonic b) Video Conference  
 c) Personal [copy given to: 1) applicant 2) applicant's representative]

Exhibit shown or demonstration conducted: d) Yes e) No.  
 If Yes, brief description: \_\_\_\_\_.

Claim(s) discussed: \_\_\_\_\_.

Identification of prior art discussed: \_\_\_\_\_.

Agreement with respect to the claims f) was reached. g) was not reached. h) N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

\_\_\_\_\_  
 Examiner's signature, if required

## Summary of Record of Interview Requirements

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

#### Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

#### 37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Ms. Kim telephoned the Examiner to discuss the merit of proposed amendment filed June 4, 2003. The Examiner agreed to enter the amendment; furthermore, the Examiner agreed to enter and consider the declaration and exhibits submitted June 4, 2003. Nevertheless, the Examiner informed Ms. Kim that the amendment, declaration, and exhibits fail to place the application in condition for allowance and that the reasons will be set forth in an advisory action to be completed and mailed as soon as possible.